IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 120 OF 1996.

The Commissioner of Income-tax, Nasik... Applicant.

V/s.

Madhukar Sahakari Sakhar Karkhana
Ltd., Faizpur ... Respondent.

Shri Ashok Kotangale with G. Hariharan i/b H.D. Rathod for the applicant.

Ms. Aasifa Khan i/b A.K. Jasani & S.M. Lala and K.B. Bhujle for the respondent.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 29th August 2005.

P.C. :

. Heard rival parties.

. This is a reference under section 256(1) of the Income-tax Act, 1961, for the A.Y. 1987-88 and 1989-90.

. For the A.Y. 1987-88, the following question of law is referred for opinion of this Court.

A.Y. 1987-88:

"Whether on the facts and in the circumstances of the case, the ITAT was right in deleting the following additions:

1. Non-refundable deposit: Rs. 22,19,128/-
2. Sugarcane Development Fund: Rs.2,12,340/
3. Drought Relief Fund: Rs. 4,24,696/-

Findings:

. After hearing rival parties, so far as the aforesaid items of deductions are concerned, they are covered by the judgment of the Apex Court in the case of **Siddheswar Sahakari Sahakari Karkhana Ltd. vs.CIT (2004) 270 ITR 1 (SC).**

. In the above view of the matter, so far as non-refundable deposit (NRD) is concerned, the Tribunal was justified in deleting the same. Thus, the question with respect to NRD is concerned, the same is answered in favour of the assessee, whereas so far as other two items relating to sugarcane development fund and Drought Relief Fund are concerned, the matter will have to be remanded back to the Tribunal for reconsideration afresh in the light of the law laid down by the Apex Court in the aforesaid case.

A.Y. 1989-90:

. So far as the A.Y. 1989-90 is concerned, the question referred is reproduced hereinbelow:

> "Whether on the facts and in the circumstances of the case the ITAT was right in deleting the following additions:
> 1. Machinery Expansion Fund : Rs.35,07,929/
> 2. Contribution to Deccan Sugar Institute. : Rs. 8,35,321/-

Findings:

. Both the aforesaid items of deductions are covered by the judgment of the Apex Court in the case of Siddheshwar Sahakari Sakhar Karkhana Ltd.(Supra). Accordingly, it will have to be held that the Tribunal was justified in deleting all the above items while finalising the assessment. Accordingly, the question is answered in favour of the assessee and against the Revenue.

. Accordingly, reference stands disposed of with no order as to costs.

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(J.P. DEVADHAR,J.) **(V.C. DAGA,J.)**